Filed 6/7/17 In re Selina C. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re SELINA C., a Person Coming Under the Juvenile Court Law.	B281422 (Los Angeles County Super. Ct. No. DK05204)
DARIO C., Petitioner. v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES Real Party in Interest.	

ORIGINAL PROCEEDING. Petition for extraordinary writ. (Cal. Rules of Court, rule 8.452.) Debra Losnick, Juvenile Court Referee. Petition denied.

Law Offices of Katherine Anderson and Jennifer Pichotta for Petitioner.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Aileen Wong, Deputy County Counsel for Real Party in Interest.

Children's Law Center of Los Angeles, Ronnie Cheung and Dwana Willis for Minor.

No appearance for Respondent.

Dario C. (father) filed a petition for extraordinary writ (Cal. Rules of Court, rule 8.452) challenging an order of the dependency court denying him family reunification services with his daughter Selina and setting a hearing pursuant to Welfare and Institutions Code section 366.26.[1] We deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

At the time the detention report was filed in this matter (Oct. 31, 2016), Erica G. (mother) had eight previous dependency referrals and two open cases. She had three children, the younger two (Stephen and Selina) with Father. Selina was born in October 2016, and her older brother Stephen was born in April 2015.

Prior dependency court proceeding

The day after Stephen's birth in April 2015, allegations of general neglect and caretaker absence were substantiated. Both mother and Stephen tested positive for amphetamines. Father, who had a lengthy criminal record, was absent due to incarceration. A section 300 petition was sustained as to Stephen in June 2015. The petition stated two counts, both relating to mother's long history of illicit drug use.

---

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Stephen was ordered removed from both father and mother in June 2015. They were to receive family reunification services, with father being provided services for incarcerated parents, including parenting counseling. Mother's reunification services were soon terminated.

In January 2016, father called the Department of Children and Family Services (DCFS) social worker and told her he had recently been released from prison and needed time to get his "life back on track." He said he would not be able to test for drugs or participate in services.

At a review hearing on March 1, 2016, the dependency court extended reunification services for father with regard to Stephen, and ordered father to have 10 drug tests, with participation in a full drug rehabilitation program if any tests were positive or missed. Father, who led a transient lifestyle, missed every drug test. He denied using drugs when speaking with the social worker, though admitted to drinking. Despite his missed tests, father did not enroll in a drug rehabilitation program. Father acknowledged that his involvement with mother posed a risk to his efforts to stay clean. As of May 2016, mother was four months pregnant with father's baby.

On October 26, 2016, the dependency court found father was not in compliance with his case plan and terminated reunification services as to Stephen. The court set a section 366.26 hearing for January 2017.

The instant proceeding

Several days after Selina was born in October 2016, DCFS received a referral that mother tested positive for methamphetamine during her pregnancy and admitted using it as recently as August 2016. Selina was born pre-term but tested negative for drugs at birth.

Although Selina was kept in the hospital for more than a week, father visited only once, the day she was born. Mother saw father after her release from the hospital and said he was "very aggressive and doing things he wasn't supposed to," but she would not explain further.

The social worker assigned to Selina's older siblings reported in late October 2016 that mother missed a court hearing for Stephen and that Stephen was in a permanent plan to be adopted by relatives. The social worker stated that mother sounded remorseful but consistently showed "zero progress." The social worker further reported that father had missed a court hearing and had "a lot of time" to participate in programs but had not done so. She stated that father had been in and out of jail, was currently on parole, and showed a lack of progress.

Father called the social worker assigned to Selina and told her he was not around for Stephen because he was in jail, but he wanted to do things differently and be there for Selina. He said he would be starting a drug treatment program the following week.

The dependency court ordered Selina detained from her parents and ordered DCFS to provide mother and father with family reunification services and monitored visitation.

Father tested positive for methamphetamine on or about November 19, 2016.

Mother was interviewed for the jurisdiction/disposition report in December 2016. She stated she had used crystal meth since she was 18, but had stopped for a while until she met father. She said that she and father "were using every time we got together but when we saw [Stephen] we didn't use." Mother had also seen father "two times cracked out. He was too aggressive, talking back. I saw a crack pipe in his room. I broke the pipe." Mother loved father and wanted to marry him and

"leave the drugs behind and . . . be a family." She knew he was participating in a three-month drug program but felt it was not long enough. "He won't be clean on the outside. I want him in residential or sober living, somewhere where they test him. Three months is nothing. He was in jail for a year and he started using right away when he got out."

In an interview father stated he started a drug treatment program at a rehabilitation center in November 2016. His enrollment was a result of a plea bargain in criminal court. When asked about his substance abuse history, father said, "My thing is alcohol." He admitted to using cocaine, but said it was 10 to 15 years earlier. He started using it again later for about a year. Father said he "tried" methamphetamine the night before he started his drug treatment program and that was why he tested dirty. However, he did "see [himself] kind of using it every other month" but "wasn't trying to use that much because of my kid." Father claimed he had "no urge for alcohol or drugs. My only urge is my kids." Father had completed one month at the rehabilitation center and planned to complete the three-month program, with outpatient services afterward.

Selina was placed with her brother at the home of a paternal aunt, who was willing and able to adopt both children. Selina was well cared for, well-adjusted, and appropriately bonded with her caregiver. Father had a three-hour monitored visit with the two children on December 19, 2016.

At the jurisdictional hearing in January 2017, the dependency court sustained section 300 petition counts under subsections (b) and (j). The sustained allegations stated that both father and mother had unresolved histories of substance abuse, leaving them incapable of providing regular care and supervision of Selina.

Father completed his drug treatment program at the rehabilitation center in February 2017. He tested clean during the entirety of the program and attended all classes. Prior to leaving the program, father told the dependency investigator that he would be transitioning to a sober living home and planned to enroll in an out-patient program. However, after he left the program, he reported that he was staying with friends. He would not provide the friends' address. He stated he was enrolled in an out-patient program and still planned to move to the sober living home. The social worker later followed up to see if father had moved to the sober living home, but father never provided information showing he had.

At the February 28, 2017 disposition hearing, Father's counsel argued that he had made a reasonable effort to treat the problem that led to the removal of Stephen from his custody, and that reunification services with Selina should be provided. Counsel for the minors and DCFS argued that reunification services should not be provided.

The dependency court noted that father had a lengthy period of reunification services with Stephen. It found he had not made a sufficiently reasonable effort to treat the problems that led to dependency intervention. The dependency court declined to order reunification services for either parent and set a section 366.26 hearing for June 27, 2017. The court noted, however, that it would "welcome a [section] 388" petition if improvement was shown.

Father timely filed a notice of intent to file a writ petition.

DISCUSSION

Father contends he should have been provided with family reunification services at the disposition hearing. We review the dependency court's order denying reunification services under the substantial evidence standard, viewing the evidence in the light

most favorable to the court's findings. (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 96 (*Cheryl P.*); *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1649.)

"Ordinarily, when a child is removed from parental custody, the juvenile court must order services to facilitate the reunification of the family. (§ 361.5, subd. (a).) '"Nevertheless, as evidenced by section 361.5, subdivision (b), the Legislature recognizes that it may be fruitless to provide reunification services under certain circumstances. [Citation.] Once it is determined one of the situations outlined in subdivision (b) applies, the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources."' [Citation.]" (*R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914 (*R.T.*).)

Section 361.5, subdivision (b) provides: "Reunification services need not be provided to a parent or guardian . . . when the court finds, by clear and convincing evidence . . . [¶] (10) [t]hat the court ordered termination of reunification services for any siblings . . . of the child because the parent . . . failed to reunify with the sibling . . . after the sibling . . . had been removed from that parent . . . pursuant to Section 361 and that parent . . . is the same parent . . . described in subdivision (a) and that, according to the findings of the court, this parent . . . has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling . . . of that child from that parent . . . ." As it applies here, this subdivision requires a two-part analysis: reunification services may be denied if the parent (1) failed to reunify with a sibling of the subject child, and (2) has not since made a reasonable effort to remedy the problem that led to removal of the sibling. (*In re B.H.* (2016) 243 Cal.App.4th 729, 736.)

We find the dependency court here adequately considered these two criteria, and substantial evidence supported the denial of reunification services.

Father first argues that section 361.5, subdivision (b)(10) could not apply because Selina's sibling, Stephen, was not removed from father's custody for the same reason that Selina was removed. Father points out that the section 300 petition relating to Stephen only contained allegations pertaining to mother's illicit drug use, and that father was incarcerated at the time reunification services were ordered with respect to Stephen. Father contends he is entitled to reunification services because Selina was not removed for the same reasons that led to the removal of Stephen.

We find that father forfeited this argument by failing to raise it below. Father's attorney in the dependency court only argued that father had made a reasonable effort to treat the problem that led to removal of Stephen. His attorney did not raise the argument that the siblings were removed for different reasons, and so counsel for DCFS and Selina (both of whom opposed reunification services), as well as the dependency court, had no reason to consider or respond to this argument. (See *In re Dakota S.* (2000) 85 Cal.App.4th 494, 502 [forfeiture (or waiver) doctrine applies in a wide variety of contexts in dependency proceedings].)

In any event, father reads section 361.5, subdivision (b)(10) too narrowly. It does not require that the later removal of a child be for the same reasons that a section 300 petition was previously sustained for a sibling. Instead, the issue is whether the parent has "made a reasonable effort to treat the *problems that led to removal* of the sibling . . . ." (§ 361.5, subd. (b)(10), italics added; see also *In re Lana S.* (2012) 207 Cal.App.4th 94, 108 [limiting

"'problems that led to removal'" as problems alleged in an earlier petition would cause absurd results].)

Here, it can certainly be said that father's substance abuse, and his related history of frequent incarceration, were problems that led to the removal of Stephen. Mother stated that she started using crystal meth again after she met father, and that they would frequently use it together. Drug use was a pervasive and destructive feature of father and mother's relationship. Moreover, father's repeated incarcerations prevented him from protecting Stephen from the harm caused by mother's drug use. Mother reported that, for a period while she was pregnant with Stephen, father was incarcerated and that the stress created by the situation caused her to use more crystal meth. Then, after Stephen was born, mother went into a drug treatment program, but left after three days upon father's release, whereupon they commenced using drugs again, including while mother was pregnant with Selina. In sum, the problems caused by father's behavior led to the removal of Stephen.

We also find that substantial evidence supported the dependency court's determination that father had not made a reasonable effort to remedy the problem that led to removal of Stephen. Father cites case law to the effect that he was not required to completely resolve the problems that led to removal for the court to find he made a "'reasonable effort to treat'" the problems. (See *In re Renee J.* (2002) 96 Cal.App.4th 1450, 1464; *Cheryl P., supra*, 139 Cal.App.4th at p. 99.) In determining whether a parent has made a "reasonable effort," however, the dependency court may consider a number of factors, including the duration, extent, and context of the parent's efforts. (*R.T., supra*, 202 Cal.App.4th at p. 914.)

Viewing the issue in context, the dependency court had a legitimate basis to find father had not made a reasonable effort.

Father points out that he completed a three-month inpatient drug program. While father's completion of the program is a positive accomplishment, it did not, by itself, require the dependency court to find that father made reasonable efforts. Father, of course, had a long history of substance abuse and criminal problems. Up until he entered the program, father displayed little if any improvement in his behavior. Father only visited Selina once during her extended stay in the hospital. After mother gave birth, she saw father and said he was "very aggressive and doing things he wasn't supposed to." Then, just prior to entering the treatment program, father tested positive for methamphetamine.

Although it appears that father did well in the treatment program, it should be noted that he enrolled as a result of a plea bargain in criminal court, so the dependency court had a basis to question his commitment to staying clean. Furthermore, even though father stated he would be transitioning to a sober living home immediately after the program ended, by the time of the disposition hearing two weeks later it appeared father had not done so. Instead, he had spent at least part of the time living with friends, and he would not provide their address. In light of the circumstances, the dependency court could reasonably find that father did not demonstrate sufficient dedication to fix his severe substance abuse problems.

Thus, even though father did not exhibit his prior destructive behavior while enrolled in the inpatient program, given father's extensive history of substance abuse, incarceration, and the related failure to reunify with Stephen, the dependency court had an ample basis to find father had not made reasonable efforts to treat his problems. Its decision to deny reunification services was proper.

DISPOSITION

The petition for extraordinary writ is denied. This opinion shall become final immediately upon filing. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
HOFFSTADT